BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

WALNUT VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022070701

ORDER GRANTING MOTION TO QUASH SUBPOENAS

JANUARY 27, 2023

On July 22, 2022, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Walnut Valley Unified School District, called Walnut Valley.

On December 19, 2022, Walnut Valley issued subpoenas duces tecum on Stowell Learning Center, Futures Academy, Doctor Maria Abramson, Doctor Blake Oldfield and/or Doctor Elliott and Associates, and Betty Lyttle, and requested they produce documents on January 10, 2022. On January 10, 2022, Student filed a motion to quash the subpoenas.

On December 19, 2022, OAH continued this matter to January 24, 2023. On January 13, 2023, OAH continued this matter to February 22, 2023.

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.). Rather, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at "a hearing conducted under subsection (f) or (k)" of section 1415 of title 20 of the United States Code. (20 U.S.C. § 1415(h).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings but does not confer the right to prehearing discovery. (Ed. Code, § 56505, subd. (e).)

In special education proceedings in California, "[t]he hearing officer shall have the right to issue Subpoenas (order to appear and give testimony) and Subpoenas Duces Tecum (order to produce document(s) or paper(s) upon a showing of reasonable necessity by a party)." (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) The law accords prehearing access to two types of documents: (i) parents have the right to request and receive the pupil's educational records within five business days at any time (Ed. Code, § 56504), and (ii) the parties are entitled to receive copies of all the documents the educational agency intends to use at hearing, not less than five business days prior to the hearing. (Ed. Code, § 56505, subd. (e)(7).)

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. In ruling on such motions, OAH relies by analogy on the relevant portions of Code of Civil Procedure section 1987.1, which provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders.

Walnut Valley failed to withdraw its subpoenas duces tecum upon the granting of the jointly requested motions to continue. As the due process hearing in this matter is now scheduled to begin on February 22, 2023, Walnut Valley is now impermissibly

requiring the production of records before the hearing and is quashed on that basis, and there is no need to address the additional grounds to quash as argued by Student. Accordingly, Student's motion to quash is granted.

IT IS SO ORDERED.

Cynthia Fritz

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings